

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MICHAEL JOSEPH GEIGER,

Plaintiff,

vs.

SPARKS POLICE OFFICER #1,

Defendant.

3: 09-cv-00448-RCJ-RAM

ORDER

Plaintiff, who is a prisoner in the custody of the Nevada Department of Corrections, has submitted a civil rights complaint pursuant to 42 U.S.C. § 1983. (Docket #1-1.) The court has previously granted plaintiff's motion for leave to proceed *in forma pauperis*. (Docket #3.)

I. Screening Pursuant to 28 U.S.C. § 1915A

Federal courts must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the Court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915A(b)(1),(2). Pro se pleadings, however, must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d. 696, 699 (9th Cir. 1988). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged

1 violation was committed by a person acting under color of state law. *See West v. Atkins*, 487 U.S. 42,
2 48 (1988).

3 In addition to the screening requirements under § 1915A, pursuant to the Prison Litigation
4 Reform Act of 1995 (“PLRA”), a federal court must dismiss a prisoner’s claim, “if the allegation of
5 poverty is untrue,” or if the action “is frivolous or malicious, fails to state a claim on which relief may
6 be granted, or seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C.
7 § 1915(e)(2). Dismissal of a complaint for failure to state a claim upon which relief can be granted is
8 provided for in Federal Rule of Civil Procedure 12(b)(6), and the Court applies the same standard under
9 § 1915 when reviewing the adequacy of a complaint or an amended complaint. When a court dismisses
10 a complaint under § 1915(e), the plaintiff should be given leave to amend the complaint with directions
11 as to curing its deficiencies, unless it is clear from the face of the complaint that the deficiencies could
12 not be cured by amendment. *See Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

13 Review under Rule 12(b)(6) is essentially a ruling on a question of law. *See Chappel v.*
14 *Laboratory Corp. of America*, 232 F.3d 719, 723 (9th Cir. 2000). Dismissal for failure to state a claim
15 is proper only if it is clear that the plaintiff cannot prove any set of facts in support of the claim that
16 would entitle him or her to relief. *See Morley v. Walker*, 175 F.3d 756, 759 (9th Cir. 1999). In making
17 this determination, the Court takes as true all allegations of material fact stated in the complaint, and the
18 Court construes them in the light most favorable to the plaintiff. *See Warshaw v. Xoma Corp.*, 74 F.3d
19 955, 957 (9th Cir. 1996). Allegations of a pro se complainant are held to less stringent standards than
20 formal pleadings drafted by lawyers. *See Hughes v. Rowe*, 449 U.S. 5, 9 (1980); *Haines v. Kerner*, 404
21 U.S. 519, 520 (1972) (per curiam). While the standard under Rule 12(b)(6) does not require detailed
22 factual allegations, a plaintiff must provide more than mere labels and conclusions. *Bell Atlantic Corp.*
23 *v. Twombly*, 127 S.Ct. 1955, 1964-65 (2007). A formulaic recitation of the elements of a cause of action
24 is insufficient. *Id.*, see *Papasan v. Allain*, 478 U.S. 265, 286 (1986).

25 All or part of a complaint filed by a prisoner may therefore be dismissed *sua sponte* if the
26 prisoner’s claims lack an arguable basis either in law or in fact. This includes claims based on legal

1 conclusions that are untenable (e.g., claims against defendants who are immune from suit or claims of
2 infringement of a legal interest which clearly does not exist), as well as claims based on fanciful factual
3 allegations (e.g., fantastic or delusional scenarios). *See Neitzke v. Williams*, 490 U.S. 319, 327-28
4 (1989); *see also McKeever v. Block*, 932 F.2d 795, 798 (9th Cir. 1991).

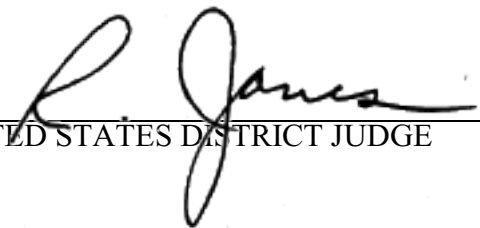
5 **II. Screening of the Complaint**

6 In this action, plaintiff seeks to challenge his arrest as a violation of the Fourteenth Amendment,
7 and his detention as a violation of the Fourteenth and Eighth Amendments. “[A] state prisoner’s § 1983
8 action is barred (absent prior invalidation) - no matter the relief sought (damages or equitable relief), no
9 matter the target of the prisoner’s suit (state conduct leading to conviction or internal prison proceedings)
10 - *if* success in that action would necessarily demonstrate the invalidity of confinement or its duration.”
11 *Wilkinson v. Dotson*, 544 U.S. 74, 81-2, 125 S.Ct. 1242, 1248 (2005).

12 Such is the case here, as success on plaintiff’s claims would necessarily establish the invalidity of his
13 confinement. Claims such as plaintiff’s are properly brought through a petition for writ of habeas corpus
14 pursuant to 28 U.S.C. § 2254, which are limited to attacks upon the legality or duration of confinement.
15 *See Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir. 1979).

16 **IT IS THEREFORE ORDERED** that this complaint is **DISMISSED** for failure to state a claim
17 upon which relief can be granted. The clerk is directed to enter judgment accordingly.

18 DATED this 19th day of October, 2010.

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21 UNITED STATES DISTRICT JUDGE
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